

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 23 2015

OFFICE OF  
MANAGING DIRECTOR

Mark B. Denbo, Esq.  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, NW, Suite 301  
Washington, DC 20016

Petitioner/Licensee/Applicants: **Millard S. Younts, Receiver**

Petition for Reconsideration of Dismissal of Waiver and Petition for Deferral of Payment: Financial Hardship

Disposition: **Dismissed and Denied** (47 U.S.C. §§ 159(c)(2), 405(a); 47 C.F.R. §§ 1.106, 1.1164, 1.1167, and 1.1910)

Station: WTLU (TV)

Fees: Fiscal Year (FY) 2012 Regulatory Fees

Date of Decision: Nov. 20, 2014

Date Petition Filed: Dec. 22, 2014

Date Regulatory Fees Paid: Not Paid

Fee Control No.: RROG-14-00015863

Dear Counsel:

This responds to Petitioner's Petition for Reconsideration<sup>1</sup> (*Petition*) of the Commission's dismissal (*Dismissal*)<sup>2</sup> of his October 17, 2013, *Request*<sup>3</sup> to waive the Fiscal Year (FY) 2012 regulatory fees. As we discuss below, under 47 U.S.C. §§ 159(c)(2) and 405(a), and 47 C.F.R. §§ 1.106 (p), 1.1164(e), 1.1167(b), and 1.1910,<sup>4</sup> we dismiss and deny the *Petition* because Petitioner

<sup>1</sup> Millard S. Younts, Receiver, Waiver and Petition for Deferral: Financial Hardship, Fiscal Year 2012, Petition for Reconsideration (Dec. 22, 2014) (*Petition*).

<sup>2</sup> Letter from Mark Stephens, Chief Financial Officer, FCC, Washington, DC 20554 to Gary S. Smithwick, Esq., Smithwick & Belendiuk, PC, 5028 Wisconsin Ave., NW, Suite 301, Washington, DC 20016 (Nov. 20, 2014) (*Dismissal*).

<sup>3</sup> Millard S. Younts, Receiver, Annual Regulatory Fees-FY 2012, WEFC-TV [former WDRL-TV], Danville, VA (Facility ID No. 15507) Bill No. R12T015507, *Petition for Waiver of FY 2012 Annual Regulatory Fee* (Oct. 17, 2013) (to distinguish the Oct. 17, 2013, pleading, captioned a "petition" from the instant Petition for Reconsideration, we refer to the first filing as *Request*) with Attachment 1, Amended Judgment Order, dated Jun. 18, 2010 (Attachment 1), Attachment 2, Memorandum Opinion and Order Approving Asset Purchase Agreement, dated Oct. 15, 2013 (Attachment 2), and Attachment 3, Declaration of Millard S. Younts, dated Oct. 17, 2013 (Attachment 3).

<sup>4</sup> 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 47 U.S.C. § 405(a) ("No such application [petition for reconsideration] shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without special order of the Commission."); 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."); 47 C.F.R. § 1.1167(b)(2) ("The filing of a petition for reconsideration or an application for review of a

is delinquent in paying the FY 2012 and FY 2013 regulatory fees and he fails to establish a basis for reconsideration.

### *Background* The Petition

On December 22, 2014, Petitioner sought reconsideration of our *Dismissal* asserting we erred by dismissing the *Request* because it was not *filed* at the Commission's proper location<sup>5</sup> and failing to inform him that we might deny the *Request*.

Specifically, Petitioner asserts that on October 17, 2013, he properly filed his *Request* to waive the FY 2012 regulatory fee with the Office of the Secretary, rather than directly with the Commission staff, as we explained in our *Dismissal*. Hence, Petitioner asserts one of our reasons for dismissal is incorrect.

Further, Petitioner asserts we failed to provide an "inkling that [we] might deny the 2012 [*Request*],"<sup>6</sup> thus, when he received the denial, he was "caught totally off-guard." In particular, Petitioner asserts that he filed two earlier requests for similar relief without providing any evidence demonstrating financial hardship.<sup>7</sup> Instead, he included only declarations asserting, "no revenue was being generated ... and [the declarant] did not have funds with which to pay the ... fee."<sup>8</sup> He adds, despite these omissions, the Managing Director granted the FY 2010 request, and stated, in part, "[t]he Commission has determined that it will waive regulatory fees for licensees who are ... in receivership at the time the fees are due."<sup>9</sup> Petitioner also asserts that our *Dismissal* is a "departure from precedent" requiring explanation,<sup>10</sup> and the Managing Director "signaled approval to the 2012 [*Request*] by removing the 'red light' ... allowing the consummation of the sale of the Station ... to proceed ... Younts [receiver] did not make any arrangements regarding payment of the 2012 regulatory fee."<sup>11</sup> Finally, Petitioner asserts it never received "notice that the OMD would insist on the provision of significant financial data to support the request for a waiver. ... Accordingly, [Petitioner] did not have any reasonable expectation that review of the 2012 [*Request*] would require the reams of financial data referenced in the [*Dismissal*], and, in any event such data do not even exist. The Commission is required to explain its change in policy requiring the provision of data by [Petitioner] in this

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fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. ... Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty. ... If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed."); see Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5346, ¶ 35 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995) (*FY 1994 R&O*) ("The filing of a petition for reconsideration will not toll th[e] 30-day period.").

<sup>5</sup> *Petition* at 2.

<sup>6</sup> *Petition* at 5.

<sup>7</sup> *Id.* at 3 & 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 4, n. 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 5.



case.”<sup>12</sup> As we discuss below, in our *Dismissal*, we provided a comprehensive explanation of our reasons.

### The Request

Petitioner submitted its *Request* on October 17, 2013, more than a year after the final day for paying the fee, and then he acknowledged that unless and until we granted several waivers,<sup>13</sup> his submission was untimely<sup>14</sup> and he was delinquent in paying the fee and the mandatory late payment penalties.<sup>15</sup> Even so, Petitioner failed to file separate motions for leave to file out of time or to waive the Commission’s rules that mandate the 25 percent late payment penalty and the accrual of interest, penalties, and costs of collection. When we received the *Request*, the top portion of the first page contained only the machine date-stamp, “RECEIVED 2013 Oct 17 P 2:35 Financial Operations.” It did not include a date-stamp from the Office of the Secretary, *e.g.*, “Accepted/Filed, Federal Communications Commission, Office of the Secretary, [date].”

Turning to the substance of his *Request*, Petitioner asserted that on September 8, 2009, the United States District Court, Southern District of West Virginia entered a \$1,111,059.14 judgment, plus post-judgment interest, attorney fees, and costs, against Melvin Eleazer, *et al.*, including MNE Broadcasting, LLC, defendants in a civil action filed by Charter Communications VI, LLC, d/b/a Charter Communications, *et al.*,<sup>16</sup> one of whom was the holder of the call station license. On June 18, 2010, the court appointed Petitioner receiver to take control of the defendants’ assets “to preserve, manage, sell, and otherwise liquidate the assets, including the FCC licenses used to operate WDRL-TV, to permit execution of the default judgment entered by the court.”<sup>17</sup> Petitioner asserted the Commission should waive the “FY 2012 regulatory fee and penalty for station WEFC-TV [formerly WDRL-TV]” because of the appointment order as a receiver, and because the station “was silent from July 15, 2010, until June 1, 2011 ... [t]he Station has been on the air and off the air during the period of receivership [and it] is currently silent ... receiver has entered into an agreement to assign the license ... but the grant cannot be entered into CDBS until the red light is removed ... the only bar to closing the sale is receipt of FCC consent ... ”<sup>18</sup> Furthermore, Petitioner asserted waiver was appropriate because he lacked funds, and, as he pointed out, on prior occasions the Commission has waived payment of the regulatory fees where the licensee is in receivership and where the station was dark.<sup>19</sup>

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<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Request* at 1 (“[Petitioner] pursuant to 47 CFR § 1.1166(a), hereby respectfully petitions ... for waiver of the annual FY 2012 regulatory fee and penalty for station WEFC-TV ...”).

<sup>14</sup> *Id.* at 2, n. 4 (“licensee just discovered that the petition for waiver of 2012 regulatory fees was ... not filed. For good cause, the licensee requests a waiver of any filing deadlines ...”).

<sup>15</sup> *Id.* at 1-2. Petitioner failed to ask for a waiver of the interest, penalties and charges of collection as set forth at 31 U.S.C. § 3717.

<sup>16</sup> *Id.*, Attachment 1, p. 1.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Petition*, pp. 1-2.

<sup>19</sup> *Id.* at 3.



Petitioner included an Amended Judgment Order, a Memorandum Opinion and Order approving an asset purchase agreement, and a declaration by Petitioner;<sup>20</sup> however, he did not include an accounting of all assets, asset valuation, expenses, complete details of all past and future sales, the disposition of sale proceeds, and the balance remaining after closing of each sale. Moreover, Petitioner failed to include adequate financial documentation to support his assertion that he lacked funds to pay the regulatory fee or to determine whether Petitioner met his burden to establish financial hardship sufficient to waive payment of the regulatory fee and accrued charges. Necessary documentation should have included a range of materials, for example, a fair market appraisal of all of defendants' assets, including the station license and all associated property and equipment, a complete accounting of "the assets of MNE Broadcasting, LLC" from the date of appointment to the present,<sup>21</sup> financial documentation of both the Petitioner and MNE Broadcasting, LLC at all relevant periods, copies of court required financial accountings, the disposition of any assets sold, transferred, or disposed of after the date of judgment, the proposed disposition of assets after the sale, and any offer by the purchaser to pay fees and the delinquent debts.

### The Dismissal

Our *Dismissal* explained that the Commission staff received the *Request* that was date-stamped, October 17, 2013, at the Commission's Financial Operations office, but without a date-stamp indicating receipt at the Commission's Office of the Secretary. Because the submission did not show the *Request* was received and filed at the location designated by the Commission,<sup>22</sup> i.e., the Commission's Office of the Secretary, it lacked evidence that the applicant followed our rules to achieve filing. We explained this was one of several reasons for dismissing the *Request*.<sup>23</sup>

Although Petitioner acknowledged<sup>24</sup> that he was delinquent in paying the FY 2012 regulatory fee,<sup>25</sup> we nonetheless explained the scope of Petitioner's delinquent debtor status by stating that our records showed Petitioner neither had paid the FY 2012 fee nor filed a timely complete petition to defer payment before the deadline, September 13, 2012.<sup>26</sup> The resulting delinquency status triggered consequences, e.g., the statutory penalty under 47 U.S.C. § 159(c), interest, penalties and charges of collection under 31 U.S.C. § 3717, and, important to the *Request*, dismissal. We also explained that Petitioner was delinquent in paying the FY 2013 regulatory fee and charges.<sup>27</sup> As set forth at 47 U.S.C. § 159(c) and 47 C.F.R. §§ 1.1164(c)<sup>28</sup> &

<sup>20</sup> Attachments 1, 2, and 3.

<sup>21</sup> Attachment 1.

<sup>22</sup> 47 C.F.R. §§ 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission."), 1.1166(a)(2) ("request should be filed with the Commission's Secretary.").

<sup>23</sup> *Dismissal* at 3.

<sup>24</sup> *Request* at 1 and 2. Petitioner also acknowledged, "Petitions for waiver must be accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship." *Request* at 3.

<sup>25</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2012, *Report and Order*, 27 FCC Rcd 8390, 8400, ¶¶ 31-32 (2012).

<sup>26</sup> Reminder That FY 2012 Regulatory Fees Are Due No Later Than September 13, 2012, Eastern Time (ET), *Public Notice* (DA 12-1423) (Aug. 31, 2012).

<sup>27</sup> Indeed, Petitioner filed a request to waive the FY 2013 regulatory fee on September 27, 2012, after the FY 2013 deadline of September 20, 2013, but before October 17, 2013 the date of the FY 2012 *Request*.



(e)<sup>29</sup> and 1.1166, we assessed late payment penalties and charges,<sup>30</sup> and we dismissed the Request.<sup>31</sup> That resolved the matter; however, as a courtesy, we explained alternative reasons for dismissal and denial.<sup>32</sup>

We summarized the Commission's long-standing rules that require a regulatee seeking waiver, reduction, or deferral to establish both prongs in our standard --good cause and that the public interest will be served thereby.<sup>33</sup> Specifically, good cause means extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>34</sup> Where the applicant raises "financial hardship,"<sup>35</sup> the applicant must "fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."<sup>36</sup> This means an applicant should include financial documents, such as a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.<sup>37</sup>

We explained that Petitioner failed to include any financial documentation.<sup>38</sup> Instead, Petitioner showed only that he was appointed receiver "to take immediate control of the assets ... to preserve, manage, sell, and otherwise liquidate the assets ... to permit execution of the default

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<sup>28</sup> 47 C.F.R. § 1.1164(c) ("If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.").

<sup>29</sup> 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.").

<sup>30</sup> See 31 U.S.C. § 3717.

<sup>31</sup> *Dismissal at 3. Assessment And Collection of Regulatory Fees For Fiscal Year 2011, Report and Order*, 26 FCC Rcd 10812, 10826, ¶¶ 36-37 (2011) (*FY 2011 R&O*) ("Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules and in the Debt Collection Improvement Act of 1996 ("DCIA"). \* \* \* We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. [Footnotes deleted]").

<sup>32</sup> *Id.* at 3-5.

<sup>33</sup> *Id.*; 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. See also *FY 1994 R&O*, 9 FCC Rcd 5344.

<sup>34</sup> *FY 1994 R&O*, 9 FCC Rcd at 5344 ¶ 29; *Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26466, ¶¶ 5-6 (2003) (*Phoenix Broadcasting, Inc.*) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

<sup>35</sup> *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Dismissal at 4.*



judgment.”<sup>39</sup> We noted<sup>40</sup> that this limited information failed to establish financial hardship, and that without the required relevant financial documentation,<sup>41</sup> Petitioner failed to meet our standard set forth at 47 C.F.R. § 1.1166. This was a separate additional reason for dismissal.

Further, we explained that Petitioner failed to (a) provide evidence of his financial capability as a receiver to pay the fee, which is a necessary component in a claim of financial hardship, or, in the alternative, (b) explain the legal authority excusing Petitioner from complying with the court order requiring him to “preserve” and to “manage” the assets, which would include paying the FCC regulatory fee.<sup>42</sup> Furthermore, Petitioner failed his duty to clarify its position with the Commission<sup>43</sup> and to maintain the accuracy and completeness of its application.<sup>44</sup> We explained that Petitioner’s failure to provide documentation of financial hardship was an additional reason to dismiss.<sup>45</sup>

We explained that merely asserting receivership status does not relieve an applicant from establishing proper grounds to seek a waiver.<sup>46</sup> Receivership status is a factor;<sup>47</sup> however, the primacy of the standard remains, the applicant must present “extraordinary and compelling circumstances showing that a waiver ... would override the public interest” in collecting the fee.<sup>48</sup> We explained, even where an applicant asserts receivership as the basis for relief, we will analyze the facts of the case to determine whether the applicant established good cause that is defined as extraordinary<sup>49</sup> and compelling circumstances,<sup>50</sup> and that waiver is justified. We explained that Petitioner failed to include financial information and to establish that the receivership was based on financial hardship.<sup>51</sup> Moreover, Petitioner’s facts led to our conclusion that a reduction in the fee would benefit the defendants by paying debts owed to the plaintiffs in the underlying lawsuit, not the public interest.<sup>52</sup> As we explained, these matters provided an additional ground to deny the *Request*.

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<sup>39</sup> *Request*, Attachment 1.

<sup>40</sup> *Dismissal* at 4.

<sup>41</sup> 47 C.F.R. § 1.1166(c).

<sup>42</sup> *Id.* at 4-5.

<sup>43</sup> *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997)(The Commission “‘need not sift pleadings and documents’ to identify arguments that are not ‘stated with clarity’ by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.”).

<sup>44</sup> 47 C.F.R. § 1.65 (“Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate.”).

<sup>45</sup> *Dismissal* at 5; 47 C.F.R. § 1.1166(c).

<sup>46</sup> *Dismissal* at 5.

<sup>47</sup> See *FY 1994 MO&O*, 10 FCC Rcd at 12762, ¶ 14 (“[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.”).

<sup>48</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12; Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003).

<sup>49</sup> Black’s Law Dictionary (9th ed. 2009)(extraordinary-“a highly unusual set of facts that are not commonly associated with a particular thing or event”).

<sup>50</sup> *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

<sup>51</sup> *Dismissal* at 5.

<sup>52</sup> *Id.*

Finally, we admonished Petitioner of the consequences of not paying the debts,<sup>53</sup> e.g., accrual of charges, application of debt collection procedures,<sup>54</sup> debt reporting,<sup>55</sup> and transfer of debt to Treasury,<sup>56</sup> which may result in non-centralized or centralized administrative offset.<sup>57</sup> We notified Petitioner he was red lighted<sup>58</sup> until he paid the debt or made other satisfactory arrangements.<sup>59</sup>

### *Standards* Waivers

In establishing the regulatory fee program mandated by Congress,<sup>60</sup> the Commission set out the relevant schedules of the annual fees and the established the procedures for, among other matters, payment, waivers, reductions, and deferral, payment, refunds, error claims, and, penalties.<sup>61</sup>

Specific to payment and penalties, "[a]ny late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164,"<sup>62</sup> which provides in relevant part, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... not paid in a timely manner,"<sup>63</sup> "[i]f a regulatory fee is not paid in a timely manner, the regulatee will be ... assess[ed] a 25 percent penalty [and] the delinquent payor's pending applications [will be subject] to dismissal,"<sup>64</sup> and "[a]ny pending or subsequently filed application ... will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee."<sup>65</sup> Furthermore, 47 U.S.C. § 159(c) provides unambiguous enforcement sanctions, i.e., automatic assessment of a 25 percent penalty, a mandate that the Commission "may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section," and direction that "[i]n addition to or in

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<sup>53</sup> *Id.* at 5-6.

<sup>54</sup> See 31 C.F.R. § 3717.

<sup>55</sup> 31 U.S.C. § 3711(e), this debt and Petitioner's payment history will be reported to credit reporting information bureaus.

<sup>56</sup> 31 U.S.C. § 3711(g) (without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges).

<sup>57</sup> 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912.

<sup>58</sup> See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ...."); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

<sup>59</sup> See 47 C.F.R. § 1.1914 ("If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.").

<sup>60</sup> See 47 C.F.R. § 1.1151.

<sup>61</sup> See 47 C.F.R. Part 1, Subpart G.

<sup>62</sup> 47 C.F.R. § 1.1157(c)(1).

<sup>63</sup> 47 C.F.R. § 1.1164.

<sup>64</sup> 47 C.F.R. § 1.1164(c).

<sup>65</sup> 47 C.F.R. § 1.1164(e).



lieu of the penalties and dismissals ... the Commission may revoke any instrument of authorization held by an entity that has failed to make payment of a regulatory fee ....<sup>66</sup>

As to the waiver provision at 47 U.S.C. § 159(d), the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.<sup>67</sup> An applicant must show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>68</sup> In an appropriate situation, fee relief may be based on a "sufficient showing of financial hardship,"<sup>69</sup> however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."<sup>70</sup> Thus, to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>71</sup>

As set forth in 47 C.F.R. § 1.65, "[e]ach applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall promptly as possible and in any event within 30 days ... amend the application ... so as to furnish such additional or corrected information ... ."

"The term, application, includes in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority."<sup>72</sup> As part of our established procedures, "[a]n application (including a petition for reconsideration or any application for review of a fee determination) ... will be examined to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits (*see, e.g.*, 31 CFR 285.13; 47 CFR part 1, subpart P)."<sup>73</sup> Furthermore, "[a]pplications by any entity found not to have paid the proper application or regulatory fee will be handled pursuant to the rules set forth in 47 CFR part 1, subpart G."<sup>74</sup>

<sup>66</sup> 47 U.S.C. § 159(c).

<sup>67</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *FY 1994 R&O*, 9 FCC Rcd 5344, ¶ 29.

<sup>68</sup> *Id.*

<sup>69</sup> *FY 1994 MO&O*, 12761-62, ¶ 13.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> 47 C.F.R. § 1.1901(d).

<sup>73</sup> 47 C.F.R. § 1.1910(a)(1).

<sup>74</sup> 47 C.F.R. § 1.1910(b)(1).



Additionally, “[a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (see §1.1901(i))<sup>75</sup> ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.”<sup>76</sup> Consistent with 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910, when an applicant for relief is delinquent in paying the regulatory fee, the Commission will dismiss<sup>77</sup> the request for relief and impose the statutory penalty.<sup>78</sup>

### Petition for Reconsideration

Under 47 C.F.R. § 1.106(d), a petition for reconsideration must “state with particularity the respects in which petitioner believes the action taken by ... the designated authority should be changed,”<sup>79</sup> and the petition must identify a material error, omission or reason warranting reconsideration.<sup>80</sup> Furthermore, under subsection 106(p), we may dismiss or deny a “Petition[] for reconsideration of a Commission action that plainly do[es] not warrant consideration by the Commission ... . Examples include, but are not limited to, petitions that: (1) Fail to identify any material error, omission, or reason warranting reconsideration ... (4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (d) of this section ....”

The filing of a petition for reconsideration does not “excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without special order of the Commission”<sup>81</sup> and it “will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission’s action, or delegated action, on a request for waiver, reduction or deferment.”<sup>82</sup>

<sup>75</sup> 47 C.F.R. § 1.1910(b)(2).

<sup>76</sup> 47 C.F.R. § 1.1910(b)(3).

<sup>77</sup> 47 U.S.C. § 159(c)(2) (“The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.”); 47 C.F.R. §§ 1.1164(e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.”); 1.1166(c) (“Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”).

<sup>78</sup> 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferments of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) (“The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. \* \* \* The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.”).

<sup>79</sup> 47 C.F.R. § 1.106(d)(1).

<sup>80</sup> 47 C.F.R. § 1.106(d)(2).

<sup>81</sup> 47 U.S.C. § 405(a).

<sup>82</sup> 47 C.F.R. § 1.1167(b)(2) (“The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission’s action, or delegated action, on a request for waiver,



## Discussion

First, we dismiss the *Petition* because Petitioner is delinquent in paying his debts, e.g., the FY 2012 and FY 2013 regulatory fees and charges, and Petitioner failed to comply with the orders in the *Dismissal* to pay the FY 2012 delinquent fees and accrued charges. As set forth at 47 U.S.C. § 405(a) and 47 C.F.R. § 1.1167(b)(2), a *Petition* does not relieve the Petitioner “from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission’s action, or delegated action, on a request for waiver, reduction or deferment.”<sup>83</sup> This ends the matter; however, as a courtesy, we address Petitioner’s points below, and thereby explain other reasons for denying the *Petition*.

In summary, Petitioner asserts we should reconsider our *Dismissal* because of a procedural error,<sup>84</sup> and because, as Petitioner characterizes the alleged substantive error, our *Dismissal* “caught [him] totally off-guard.”<sup>85</sup> In particular, Petitioner asserts we committed a procedural error by dismissing the *Request* as not filed with the Secretary, because, as Petitioner asserts, he properly filed with the Secretary. Further, Petitioner asserts we granted his FY 2010 request that lacked financial support,<sup>86</sup> thus we erred because we failed to alert him that he needed to furnish “financial data to support the request for a waiver”<sup>87</sup> and that “OMD might deny the 2012 *Petition*.”<sup>88</sup> Additionally, Petitioner believes we erred because Petitioner “did not make any arrangements” to pay the regulatory fee, although he “could have made [such an] arrangement.”<sup>89</sup> Petitioner notes, we must explain our reasons for departing from our decision stated in a 2011 letter granting the FY 2010 request.<sup>90</sup> As we discuss below, these assertions are meritless and do not form grounds for reconsideration.

First, Petitioner asserts that he filed his *Request* at the Office of the Secretary, thus we were wrong to conclude it was not filed properly and to dismiss. We disagree. Our rules<sup>91</sup> provide that a document is filed when it is received at the location designated under our rules, which in this case is the Office of the Secretary. An applicant may demonstrate proper filing with a copy of the document containing the office date-stamp; however, that evidence was missing from the submission received at the Managing Director’s staff office and it was not forthcoming

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reduction or deferment. ... If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.”); see *FY 1994 R&O*, 9 FCC Rcd at 5346, ¶ 35, *supra* (“The filing of a petition for reconsideration will not toll this 30-day period.”). See 47 C.F.R. § 1.1164 (e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.”).

<sup>83</sup> *Id.*

<sup>84</sup> *Petition* at 1-2.

<sup>85</sup> *Id.* at 5.

<sup>86</sup> *Petition* at 3.

<sup>87</sup> *Id.* at 6.

<sup>88</sup> *Id.* at 5.

<sup>89</sup> *Id.* at 5-6, n. 3.

<sup>90</sup> *Id.* at 4, n. 2.

<sup>91</sup> 47 C.F.R. §§ 1.7 (“pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.”), 1.1166(a)(2) (“request should be filed with the Commission’s Secretary.”).



with the *Petition*. Nonetheless, even if Petitioner has proof of proper filing, he does not present a “material error, omission, or reason warranting reconsideration,”<sup>92</sup> because we dismissed on several independent grounds, of which failure to file was but one. Indeed, nothing in the *Petition* alters or even challenges critical facts that Petitioner’s *Request* was more than a year late and Petitioner was delinquent in paying the FY 2012 and the FY 2013 regulatory fees, the accrued mandatory statutory penalties, and the accrued charges. Indeed, in his *Request*, Petitioner acknowledged both delinquency and lateness.<sup>93</sup> Finally, Petitioner does not challenge<sup>94</sup> our determination that 47 U.S.C. § 159(c)(2), 47 C.F.R. §§ 1.1164(c) & (e)<sup>95</sup> mandate dismissal. Hence, even if Petitioner provides evidence to substantiate a procedurally proper *filing*, that element is not material to the outcome.

Second, Petitioner asserts reconsideration is warranted because we granted a similar request in 2010<sup>96</sup> and we failed to notify Petitioner that “OMD might deny the 2012 *Petition*”<sup>97</sup> or that Petitioner had to furnish “financial data to support the request for a waiver,”<sup>98</sup> and Petitioner “did not make any arrangements” to pay the regulatory fee, although he “could have made [such an] arrangement.”<sup>99</sup> Petitioner asserts the Commission “is required to explain its change in policy.”<sup>100</sup> These assertions also lack merit.

First, Petitioner is expected to know the Commission’s rules and procedures<sup>101</sup> for filing a ~~timely and proper application for a waiver and a petition to defer payment, and the consequences~~ of being a delinquent debtor.<sup>102</sup> Next, our rules and annual regulatory fee orders provide the particular notice Petitioner now asserts was lacking. Furthermore, having acknowledged<sup>103</sup> both that his submission was late<sup>104</sup> and that he was a delinquent debtor,<sup>105</sup> and having asked for waivers, albeit, improperly, Petitioner cannot now claim ignorance of his situation. Plainly, on October 17, 2013, Petitioner knew or should have known that under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164 and 1.1910, the Commission would dismiss the submission and demand immediate payment of the delinquent debts.<sup>106</sup> Hence, Petitioner’s protestations that he was unaware his *Request* might be dismissed, and that he should have received advance notice of the

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<sup>92</sup> 47 C.F.R. § 1.106(p).

<sup>93</sup> *Request* at 1-2.

<sup>94</sup> Under 47 C.F.R. § 1.106 (p) a petitioner must “state with particularity the respects in which petitioner believes the action taken should be changed.”

<sup>95</sup> *Dismissal* at 3.

<sup>96</sup> *Petition* at 3.

<sup>97</sup> *Id.* at 5.

<sup>98</sup> *Id.* at 6.

<sup>99</sup> *Id.* at 5-6, n. 3.

<sup>100</sup> *Id.* at 6.

<sup>101</sup> 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc., Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

<sup>102</sup> Assessment and Collection of Regulatory fees for Fiscal Year 2012, *Report and Order*, 27 FCC Rcd 8390, 8400, ¶¶31-40 (2012).

<sup>103</sup> *Request* at 1-2.

<sup>104</sup> *Id.* at 2, n. 4 (“licensee just discovered that the petition for waiver of 2012 regulatory fees was apparently not filed.”).

<sup>105</sup> *Id.* at 1 (Petitioner “petitions ... for waiver of the annual FY 2012 regulatory fee and penalty ...”).

<sup>106</sup> *FY 2011 R&O*, 26 FCC Rcd at 10826, ¶¶ 36-37 (“We will withhold action on any applications ... filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications ... if payment of the delinquent debt or other satisfactory arrangement for payment is not made.”).



consequences of his errors are not believable. Similarly, Petitioner's assertion that he was unaware that financial documentation is necessary lacks credibility in the light of his acknowledgment of our rule in his *Request* that "[p]etitions for waiver must be accompanied by a petition to defer payment due to financial hardship, *supported by documentation of the financial hardship* (emphasis added)." <sup>107</sup>

Petitioner's late filing, his delinquency, his failure to include supporting financial documentation, coupled with the applicable law <sup>108</sup> soundly rebut Petitioner's assertion that he "reasonably expected that OMD would treat the 2012 Petition in the same way as it had treated the 2010 and 2011 Petitions." <sup>109</sup> Moreover, a prior year's decision, even involving the same applicant on similar controlling facts is not precedence. Indeed, 47 U.S.C. § 159(d) and our rule at 47 C.F.R. § 1.1166 provide that a fee "may be waived ... deferred in *specific instances* ... where *good cause* is shown and where waiver, reduction or deferral of the fee would *promote the public interest* [Emphasis added]." Each request is considered on a case-by-case basis, <sup>110</sup> and earlier decisions are not precedent. <sup>111</sup>

Petitioner acknowledged that his *Request* was 13-months late with a brief footnote explanation that "licensee just discovered that the petition for waiver of 2012 regulatory fees was apparently not filed. For good cause, the licensee requests a waiver of any filing deadlines to accept this petition." <sup>112</sup> Petitioner's off-hand request for a waiver supported only with an invocation of the words, "good cause," does not meet the standard that the applicant establish there is *good cause* to do so, i.e., special circumstances warrant a deviation from the general rule and that such deviation would better serve the public interest that would strict adherence to the general rule. <sup>113</sup> Moreover, Petitioner's recent discovery that he missed the deadline is not "extraordinary circumstances ... which would justify a waiver of the late charge penalty." <sup>114</sup> Finally, in seeking only to waive "any filing deadlines to accept [the *Request*]," Petitioner ignored and failed to request relief from the consequences of our enforcement provisions at 47 U.S.C. § 159(c) <sup>115</sup> and 47 C.F.R. §§ 1.1157, and 1.1164, which would have prevented action on the *Request*.

Furthermore, the *Request* was incomplete. We explained that Petitioner failed to document how paying the fee will adversely affect his ability to serve the public. <sup>116</sup> Although

<sup>107</sup> *Request* at 3; 47 C.F.R. § 1.1166(c).

<sup>108</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166.

<sup>109</sup> *Petition* at 5.

<sup>110</sup> 47 C.F.R. § 1.1166.

<sup>111</sup> 47 C.F.R. § 0.445(e).

<sup>112</sup> *Request* at 2, n. 4.

<sup>113</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (DC Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (DC Cir 1990); 47 C.F.R. § 1.3.

<sup>114</sup> *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6590 (2004).

<sup>115</sup> 47 U.S.C. § 159(c) provides for a 25 percent late payment penalty, dismissal of applications, and revocation of licenses.

<sup>116</sup> *Phoenix Broadcasting, Inc.* 18 FCC Rcd at 26466 ¶ 5-6 ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees,



Petitioner mentioned a pending sale of the station, he failed to provide relevant details of the sale and disposition of the proceeds. Now, Petitioner asserts reconsideration is warranted because the Commission should have notified him prior to the sale and transfer of the station, so that Petitioner "could have made ... arrangement[s] with respect to the payment of the regulatory fee."<sup>117</sup> This raises two problems. First, Petitioner knew of events that would affect the accuracy and completeness of his *Request*, yet he failed to notify the Commission,<sup>118</sup> and second, Petitioner bears the responsibility for failing to escrow an amount to pay the fees and penalties. This resolves the *Petition* and we need not repeat from our *Dismissal* our comprehensive explanation of the Commission's established standards and the reasons for dismissing and denying the *Request*.

Although we provided proper notification in our *Dismissal*, we refresh our notice that 31 U.S.C. § 3717(e) and 47 C.F.R. § 1.1940 require us to assess (a) collection charges, (b) interest at the Treasury rate when the debt is more than 30 days delinquent, and (c) a penalty of 6% after 90 days. These charges will continue until Petitioner pays the debt in full or executes an approved written installment payment plan. Furthermore, under 31 U.S.C. § 3711(g), without further notice, we will transfer delinquent debt to Treasury, which will initiate collection action through private collection activities, and Treasury will assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Finally, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5 and 47 C.F.R. § 1.1912, ~~some or all of~~ the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Petitioner's payment history will be reported to credit reporting information bureaus.

Until Petitioner makes full payment of the fees, late payment penalties,<sup>119</sup> and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940,<sup>120</sup> we will withhold action on and thereafter dismiss any pending application.<sup>121</sup>

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[applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

<sup>117</sup> *Petition* at 5, n. 3.

<sup>118</sup> 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall promptly as possible and in any event within 30 days ... amend the application ... so as to furnish such additional or corrected information ...").

<sup>119</sup> 47 U.S.C. § 159(c).

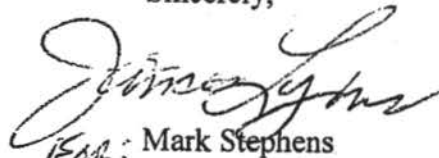
<sup>120</sup> 31 U.S.C. § 3717; 47 C.F.R. § 1.1940 ("the Commission shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717 ... These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.").

<sup>121</sup> 47 C.F.R. § 1.1910(a)(2) & (3) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.").



If Petitioner has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Stephens".

For: Mark Stephens  
Chief Financial Officer